

BEFORE THE HIGH COURT OF GUJARAT AT AHMEDABAD.

FIRAT APPEAL NO. 520 OF 1992.

Date of Decision:-19-7-1996.

For Approval and Signature:

HONOURABLE MR. JUSTICE N.J. PANDYA

AND

HONOURABLE MR. JUSTICE A. R. DAVE.

1. Whether Reporters of Local Papers may be allowed to see the judgements? No. No.
2. To be referred to the Reporter or not? No. No.
3. Whether Their Lordships wish to see the fair copy of the judgement? No. No.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No. No.
5. Whether it is to be circulated to the Civil Judge? No.

Appearance:

1. Mr. M.G. Nagarkar, Advocate for the appellant.
2. Mr. M.B. Parikh, Advocate, for the respondent.

Coram : N. J. PANDYA AND A. R. DAVE, JJ.
(19-7-1996)

ORAL JUDGEMENT(Per N. J. Pandya, J.)

The appellants are right in pointing out that the learned Trial Judge has been too generous in taking the income base of the applicant aged about 55 years in assessing compensation in an injury case. Nodoubt, in fairness of the learned Trial Judge it must be said that the applicant before him was shown to be cultivating 30

acres of land in Dhari Taluka of district Amreli. From the evidence on record from Exh.47 to Exh.51 produced by the Talati of the village in the course of his deposition Exh.45 on one hand there is material evidence indicating that the land standing in the name of the applicant in the revenue record is cultivating by somebody else. Remaining lands are also 'Gauchar' land or land in possession of the village Panchayat which apparently the applicant is cultivating the same. Looking to the tentative and unauthorised nature of possession, the entire income claimed by the petitioner before the learned Trial Judge cannot be taken as the base.

2. Even in respect of the land standing in the name of the petitioner, when somebody else is cultivating, the income will have to be reduced to half. At least division can be made for the person who is actually cultivating.

3. Once this approach is taken for determining likely income of the claimant and in our opinion this is the only approach possible in absence of any other material on record, instead of assessing income of Rs.2000/- p.a., we are of the view that income of the claimant should be assessed at Rs.10,000/-p.a. Considering 25% disability, the actual amount of future economic loss per year would come to Rs.2,500/- instead of Rs.5,000/- as assessed by the Tribunal.

4. Once this is done, obviously the future economic loss of Rs.75,000/- will be correspondingly reduced.

5. In our opinion, learned Advocate, Mr. Nagarkar is right in pointing out that the claimant is aged 55 years and multiplier of 15 applied by the learned Trial Judge is not correct. We agree with him. Multiplier can be between 11 to 13 and therefore we adopt multiplier of 12. Accordingly, the future economic loss comes to Rs.30,000/-. There is, therefore, reduction of 45,000/under this very head.

6. In our opinion, no other point has been made out to interfere with the award and hence the award of the Motor Accident Claims Tribunal (Main), Amreli given on 21-8-1990 in Motor Accident Claim Petition No.28/87 is modified only to the aforesaid extent. The appeal is partly allowed. Consequential effect on proportionate cost and interest to the extent to which the appeal is allowed will also enure to the benefit of the appellant. Rest of the award of the trial Court is as it is. The appeal is disposed of accordingly. No order as to costs.

-0-0-0-0-0-0-